"malice" and unjustifiable motives can come before the courts in the same form as before, whenever there are several defendants. In England it appears to be likely that conspiracy will not be held to furnish a cause of action in any case where an action would not lie against a single defendant according to the doctrine of *Allen* v. *Flood*; to that effect, at any rate, is a decision in a court of the first instance, *Huttley* v. *Simmons*, 14 Times L. R. 150, following immediately after the announcement of the decision in the House of Lords. In this country there have been so many decisions holding defendants liable for what the courts consider malicious interference with the plaintiff's business, that it seems probable that the judges will pay little respect to *Allen* v. *Flood*, beyond distinguishing it as without the element of conspiracy which has been present in all the American cases, and hereafter giving more attention to this last point. The most satisfactory method of dealing with this whole subject, it may be suggested, is that now likely to be adopted in England, by simply making the more objectionable forms of boycotting criminal offences, and giving up all attempts to stretch the law of torts to cover cases lying outside of the clearly recognized classes of actionable wrongs.

THE ANNULMENT OF A LOTTERY FRANCHISE. — Under authority conferred by acts of the Kentucky Legislature, the city of Frankfort, by written agreement, sold to one Stewart a lottery scheme devised by that municipality. One Douglas afterward acquired Stewart's right. Later, the Kentucky Legislature repealed the charter of the Frankfort lottery, and in the new Constitution of the State all lotteries were forbidden and all lottery privileges and charters previously granted were revoked. It was held by the Supreme Court of the United States that this constitutional provision, as applied to Douglas's claim of a lottery privilege, was not repugnant to that clause of the Constitution of the United States providing that no State shall pass laws impairing the obligation of contracts. In this case, *Douglas* v. *Kentucky*, 18 Sup. Ct. Rep. 119, Mr. Justice Harlan thus states the position of the court: ". . . we hold that a lottery grant is not, in any sense, a contract within the meaning of the Constitution of the United States, but is simply a gratuity and license which the State, under its police powers, and for the protection of the public morals, may at any time revoke, and forbid the further conduct of the lottery; and that no right acquired during the life of the grant, on the faith of or by agreement with the grantee, can be exercised after the revocation of such grant and the forbidding of the lottery, if its exercise involves a continuance of the lottery as originally authorized."

This decision, which follows the well-known case of *Stone* v. *Mississippi*, 101 U. S. 814, clearly illustrates the present tendency of the courts to restrict within as narrow limits as possible the doctrine of *Dartmouth College* v. *Woodward*, 4 Wheat. 518. Surely in many respects this tendency is gratifying. In this very matter of lotteries alone, were it the law that a lottery grant is a contract which the State has no power to revoke, not only would the moral consequences be harmful to society, but there would also result a most serious weakening of governmental authority. In these lottery cases, indeed, there is involved a broad and fundamental question as to the true scope of legislative power. Unquestionably the so-called "police power" is a proper exercise of the legislative function; but the great difficulty has been to fix upon its true limits. Whatever be those limits as to

other matters, and whether or not *Dartmouth College* v. *Woodward* was decided correctly, it is certainly in accordance with sound legal principles to hold that the Legislature has no right to barter away its power to establish such rules as may be reasonably necessary from time to time for the protection of the public morals against the evils of lotteries. As was remarked by Mr. Chief Justice Waite, in *Stone* v. *Mississippi*, *supra*, referring to lotteries: "Certainly the right to suppress them is governmental, to be exercised at all times by those in power at their discretion. Any one, therefore, who accepts a lottery charter does so with the implied understanding that the people, in their sovereign capacity and through their properly constituted agencies, may resume it at any time when the public good shall require, whether it be paid for or not. He has in legal effect nothing more than a license. . . ."

A NEW TRIAL FOR BRAM. — The Supreme Court of the United States has granted a new trial to Bram, first mate of the barkentine "Herbert Fuller," who was convicted a year ago of the murder of Captain Nash on the high seas. *Bram* v. *United States*, 18 Sup. Ct. Rep. 183. It will be remembered that after the murder the vessel put into the port of Halifax. Bram was taken into custody immediately upon landing, and was soon afterwards sent for by a police detective. At the detective's office he was stripped and searched; and in the course of the search a conversation took place which the detective described at the trial as follows: —

"When Mr. Bram came into my office I said to him, 'Bram, we are trying to unravel this horrible mystery.' I said, 'Your position is rather an awkward one. I have had Brown in this office, and he made a statement that he saw you do the murder.' He said, 'He could not have seen me. Where was he?' I said, 'He states he was at the wheel.' 'Well,' he said, 'he could not see me from there.' I said, 'Now, look here, Bram, I am satisfied that you killed the Captain from all I have heard from Mr. Brown. But,' I said, 'some of us here think you could not have done all that crime alone. If you had an accomplice you should say so, and not have the blame of this horrible crime on your own shoulders.' He said, 'Well, I think, and many others on board the ship think, that Brown is the murderer; but I don't know anything about it.'"

The detective stated at the trial that no influence on his part was exerted to persuade Bram one way or the other. His testimony as to Bram's answers was admitted; and because of its admission the Supreme Court has ordered a new trial.

A defendant is protected from having his own statements produced against him when they were induced by duress or promise of favor as touching the case on the part of one having authority in that respect; and the question to be considered is whether in the present case this rule can be applied. No threat or promise of favor was directly expressed by the detective's words. The only remark to which such a meaning could have been attributed was, "If you had an accomplice you should say so, and not have the blame of this horrible crime on your own shoulders." These words, however, are addressed merely to the moral sense; they offer no advantage, except perhaps a moral one. They make no threat; and they could hardly have been thought to do so even by the courts which decided the extreme cases early in this century. *Rex* v. *Thornton*, 1 Moo. C. C. 27.